

DEPARTMENT OF CORPORATIONSwww.corp.ca.gov**DEMETRIOS A. BOUTRIS****California Corporations Commissioner
Sacramento, California**IN REPLY REFER TO:
FILE NO: PRO 27/01**INVITATION FOR COMMENTS ON ADMINISTRATIVE REGULATIONS
UNDER THE CORPORATE SECURITIES LAW OF 1968
SECURITIES OPTION AND PURCHASE PLANS****NOTICE**

Pursuant to Government Code Section 11346(b), the Department of Corporations ("Department") is inviting comments from interested persons regarding the following regulations under the Corporate Securities Law of 1968 ("CSL"):

- Title 10, *California Code of Regulations*, section 260.140.41, Employee, Director and Consultant Options.
- Title 10, *California Code of Regulations*, section 260.140.42, Employee, Director and Consultant Purchases.
- Title 10, *California Code of Regulations*, section 260.140.45, Limitation on Number of Shares.
- Title 10, *California Code of Regulations*, section 260.140.46, Information to Employees.

These rules pertain to securities qualification standards for employee, director, and consultant option and purchase plans. Comments from interested persons will assist the Department in determining whether additional amendments are necessary and appropriate.

BACKGROUND

The Department is seeking a broad range of comments on whether changes are necessary to the securities qualification standards for employee, director, and consultant option and purchase plans. In soliciting comments, the Department seeks to ensure that all interests are fairly represented and considered before any changes to the rules are proposed for adoption.

- ♦ Securities ♦ Franchises ♦ Off-Exchange Commodities ♦ Investment and Financial Services ♦
- ♦ Independent Escrows ♦ Consumer and Commercial Finance Lending ♦ Residential Mortgage Lending ♦

In 1999, the Department proposed amendments to Sections 260.140.41, 260.140.42 and 260.140.45 of title 10 of the California Code of Regulations (published in Cal. Reg. Notice Register 99, No. 01-Z, p. 26, hereinafter referred to as the “1999 Rulemaking Project”). The 1999 Rulemaking Project was subsequently abandoned due to concerns that the proposed amendments may not be in the public interest and for the protection of investors.

In 2001, the Department proposed amendments to Sections 260.140.41, 260.140.42, 260.140.45, and 260.140.46 of title 10 of the California Code of Regulations to implement the statutory change to Section 25102(o) of the Corporations Code enacted by SB 1837 (Chap. 705, Stats. 2000) (hereinafter referred to as the “2001 Rulemaking Project”). In relevant part, SB 1837 provided that the offer or sale of any security issued by a limited liability company pursuant to a purchase plan or agreement is exempt from the qualification requirements of Section 25110 of the Corporations Code if certain requirements are met, including the requirement that the terms of any purchase plan or agreement comply with Sections 260.140.42, 260.140.45, and 260.140.46 of Title 10 of the California Code of Regulations, and the terms of any option plan or agreement comply with Sections 260.140.41, 260.140.45, and 260.140.46 of Title 10 of the California Code of Regulations.

During the comment period for the 2001 Rulemaking Project, the Department received several comments requesting it to amend the regulations in the manner previously proposed in the 1999 Rulemaking Project. These amendments are outside the scope of the 2001 Rulemaking Project. However, given the recent developments with respect to stock compensation and the continued interest in amending these regulations, the Department is inviting comments from interested persons to determine whether additional revisions to these rules are in the public interest and for the protection of investors.

QUESTIONS UNDER CONSIDERATION

Should Sections 260.140.41, 260.140.42, 260.140.45, and 260.140.46 of title 10 of the California Code of Regulations be further modified? If so, how?

FORMAT FOR COMMENTS

For each and every suggested change to the above regulations, the Department requests that comments address and provide explanations to all of the following questions:

1. What is the problem that the suggested change is addressing?
2. What does the suggested change do to resolve the problem?
3. Why is the suggested change necessary?

4. How is the suggested change:
 - (a) Consistent with the purposes of the CSL?
 - (b) Consistent with the provisions of the CSL?
5. What existing laws or regulations are directly related to the proposed change?
6. What are the benefits and burdens of the suggested change to:
 - (a) The issuer?
 - (b) The option holders/plan participants?
 - (c) Other security holders?
 - (d) Any other third parties (including any private person or business)?
7. What positive or negative fiscal impact (if any) does the suggested change have on:
 - (a) The issuer?
 - (b) Option holders/plan participants?
 - (c) Other security holders?
 - (d) Any other third parties (including any private person or business)?
8. What significant adverse economic impact (if any) will the proposed changes have on any private person or business?
9. How will the suggested change (if applicable):
 - (a) Impact the ability of California businesses to compete with businesses in other states?
 - (b) Create or eliminate jobs in California?
 - (c) Create new businesses or eliminate existing businesses within California?
 - (d) Expand businesses currently doing business within California?
 - (e) Result in any cost impact that a private person or business would necessarily incur in reasonable compliance with the suggested change?
10. What alternatives (if any) are available that would:
 - (a) Be more effective in carrying out the purpose of the proposed change?
 - (b) Be as effective but less burdensome to any affected private person than the proposed change?
 - (c) Lessen the adverse impact (if any) on small business?
11. How does the proposed change:
 - (a) Serve the public interest?
 - (b) Protect investors?

TIME FOR COMMENTS

The Department requests comments be received by: **Friday, April 26, 2002.**

WHERE TO SUBMIT COMMENTS

Please reference PRO 27/01 in correspondence to the Department. Please submit comments as follows:

Kathy Womack
Office of Law and Legislation
Department of Corporations
1515 K Street, Suite 200
Sacramento, CA 95814-4052

Written comments may also be sent to Kathy Womack (1) via electronic mail at regulations@corp.ca.gov or (2) via fax (916) 322-5875.

CONTACT PERSONS

Nonsubstantive inquiries concerning this INVITATION FOR COMMENTS, such as requests for copies of documents or questions regarding timelines, may be directed to Kathy Womack at (916) 322-3553. Inquiries regarding the substance of this invitation for comments may be directed to Colleen E. Monahan, Corporations Counsel, at (916) 323-7384.

Dated: January 18, 2002
Sacramento, California

DEMETRIOS A. BOUTRIS
California Corporations Commissioner

By _____
TIMOTHY L. Le BAS
Assistant Commissioner and General Counsel
Office of Law and Legislation
(916) 322-3553